From: brian215@netscape.net@inetgw
To: Microsoft ATR
Date: 1/28/02 7:18pm
Subject: Microsoft Settlement

The proposed settlement, while appearing to address the anticompetitive behaviour identified in the 1998 complaint, is deficient in several ways.

First and foremost, the complaint itself was, it may be inferred, limited in scope, for the purposes of greater probability of gaining a conviction or settlement, and for the purposes of shortening the proceedings.

As such, there is much, reasonably well documented and widely known in the industry, past behavior of an anticompetitive nature on Microsofts part, which was not included in the complaint. This behavior continues, and should be addressed in any settlement or imposed finding by the court.

Specific activity, which is ongoing, was not identified, and which must be stopped, includes the purchasing of software companies dominant in their specific niche markets and providing multi-platform software; purchasing the companies or "poaching" critical assets (eg employees) of companies making development software (eg the Borland, past developers of "C" compiler which competed with Microsoft's product, whose entire development staff was hired by MS, effectively crushing Borland); and the contractual tying of distribution rights for Explorer, to the use of Microsoft Software on portal internet sites (among ISPs who operate servers and also supply browser software to customers, effectively falsely boosting server market share as well as extortionary pricing).

Another impact, not addressed, is the potential employment market for software developers. By establishing, through its predatory practices, an unnatural market with uncompetitive salaries, Microsoft effectively established a salary cap in the software industry, which has directly affected every single software developer, as well as limiting the potential market for developers, by establishing a closed market in many software solution areas, as well as "closed shop" sectors in further areas and placing high barriers to entry to competitors who might have opened these sectors with enabling software (OS's, languages, middle-ware, and open standards in the Open Source Software areas).

In addition to its bad corporate practices, Microsoft has: established its own bad development practices (via its Certification programs); broken the pre-existing "mentor" practice for software development (by hiring, exclusively, college graduates or college students) thus circumventing "best practices" indoctrination in the industry; demolished pre-existing "competitive but cooperative" market practice among competing products (eg ability to import/export among differing word processing packages); and established "anti-marketing", the practice now coined "Fear Uncertainty and Doubt" (FUD), synonomous with Microsoft but used in other business sectors. Additionally, the failure to adequately address many aspects of what an operating system is itself designed to handle, such as networking, security, file names, memory protection, etc, have been dismal failures or ignored completely - things which in a truly competitive market would have spelled the end of a company failing at such a basic level.

All of these behaviors are anti-competitive. All are harmful to consumers. All have had the effect of reducing competition, raising prices, and limiting or eliminating development of new features. All of these need to be addressed, effectively, in any settlement or consent decree, or other court action against Microsoft.

If the court were to see fit to also impose minimum standards on any software deemed an effective monopoly, be it the operating system, browser, complier, network stack, or similar, the protection of consumer interests and businesses alike would be well serverd.

I hope these comments are useful in the settlement process.

Sincerely,

Brian Dickson
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